(3)

Supreme Court, U.S.
FILED
NOV 17 2000
CLERK

No. 00 - 687

IN THE SUPREME COURT OF THE UNITED STATES

JOHN ARDELL PURSLEY, Petitioner

v.

P. CALVIN ROBERTS, RUTH LAUBMIER,
ROSALIE REGINA WILSON,
ANNA ELEANOR LONG, DONALD MILTON KELIUS,
FRANKLIN DAVID KELIUS AND RAY KELIUS,
Respondents

CONSTANCE KEHOE, EXECUTRIX FOR THE
ESTATE OF DOROTHY F. MESSERLY, Respondent

GEORGE W. PEDLOW III, Respondent

RESPONSE SUPPORTING THE PETITION
of John Ardell Pursley
For A Writ of Certiorari To
The Supreme Court of Pennsylvania

George W. Pedlow III, Pro Se, Respondent
224 Outer Dr.
State College, PA 16801
814-466-7454

November 17, 2000

17pp

TABLE OF CONTENTS

TABLES of CONTENTS and AUTHORITIES ..... pp. i - v

RESPONSE SUPPORTING THE PETITION
of John Ardell Pursley ..... pp. 1 - 2

APPENDIX ..... pp. A1 - A8

APPENDIX: Cases Noted

Chevron Oil Co. v. Huson (404 U.S. 97;
92 S. Ct. 349; 1971 U.S. LEXIS 95;
30 L. Ed. 2d 296; 1971) A1

Gwendolyn Jenkins, Appellee v. Hospital
of The Medical College of Pennsylvania and
Dr. Carol Grabowski and Dr. Dorothy M. Barbo,
Appellants (535 Pa. 252; 634 A.2d 1099;
1993 Pa. LEXIS 292; 1993) A2

Shrider's Leasee v. Nargan (1 Dall. 68; 1782) A5

Philadelphia, Baltimore & Washington R.R.
to use v. Quaker City Flour Mills Co.,
Appellant (282 Pa. 362; 127 A. 845;
1925 Pa. LEXIS 629; 1925) A5

Burtt's Estate (353 Pa. 217; 44 A.2d 670;
162 A.L.R. 1053; 1945) A6

Menges v. Dentler (33 Pa. 495; 1859) A8

TABLE of AUTHORITIES
(In both text and appendix quotations)

UNITED STATES CONSTITUTION

Fifth, Fourteenth Amendments,
Contract Clause, Art. I, Sec. 10 2

UNITED STATES SUPREME COURT CASES

Allen v. State Board of Elections,
393 U.S. 544 ..... A1

Barasch v. Pennsylvania Public Utility
Commission, 516 Pa. 142, 167,
532 A.2d 325, 337, aff'd., 488 U.S. 299,
109 S. Ct. 609, 102 L. Ed. 2d 646 (1989) 1, A2

Cameron v. U.S., 231 U.S. 710 ..... A5

Chevron Oil Co. v. Huson (404 U.S. 97;
92 S. Ct. 349; 1971 U.S. LEXIS 95;
30 L. Ed. 2d 296 (1971) 1, A1

Chicot County Drainage Dist. v.
Baxter State Bank, 308 U.S. 371 ..... A1

Cipriano v. City of Houma, 395 U.S. 701 ..... A1

England v. State Board of Medical Examiners,
375 U.S. 411 ..... A1

Ettor v. Tacoma, 228 U.S. 148, 33 S.Ct. 428,
57 L.Ed. 773 (1913) A4

Forbes Pioneer Boat Line v. Board of Comm'rs,
258 U.S. 338, 42 S.Ct. 325,
66 L.Ed. 647 (1922) (Holmes, J.) A4

Hanover Shoe v. United Shoe Machinery Corp.,
392 U.S. 481 ..... A1

Linkletter v. Walker, 381 U.S. 618 ..... A1

Lynch v. United States, 292 U.S. 571,
54 S.Ct. 840, 78 L.Ed. 1434 (1934)
(Brandeis, J.) A4

Marbury v. Madison, 5 U.S. (1 Cranch) 87,
102, 2 L.Ed. 60 (1803) (Marshall, J.) A4

Schwab v. Doyle, 258 U.S. 529 ..... A5

Simpson v. Union Oil Co., 377 U.S. 13 ..... A1

U.P.R.R. Co. v. Laramie Stock Yards Co.,
231 U.S. 190 ..... A5

U.S. Fidelity & Guaranty Co. v.
Struthers Wells Co., 209 U.S. 306 ..... A5

U.S. v. Heth, 3 Cranch 399 ..... A6

United States Trust Co. v. New Jersey,
431 U.S. 1, 26-7, 97 S.Ct. 1505, 1520,
52 L.Ed.2d 92 (1977) A4

W. B. Worthen Co. ex rel. Bd. of Comm'rs v.
Kavanaugh, 295 U.S. 56, 55 S.Ct. 555,
79 L.Ed. 1298 (1935) (Cardozo, J.) A4

PENNSYLVANIA COURT CASES

Automobile Trade Association Of Greater
Philadelphia, et al., Appellants, v.
City Of Philadelphia, et al., Appellees,
528 Pa. 233; 596 A.2d 794;
1991 Pa. LEXIS 169 (1991) 1

Barasch v. Pennsylvania Public Utility
Commission, 516 Pa. 142, 167,
532 A.2d 325, 337, aff'd.,
488 U.S. 299, 109 S. Ct. 609,
102 L. Ed. 2d 646 (1989) 1, A2

Barnes Foundation v. Keely et al.,
314 Pa. 112, 171 A. 267 ..... A6

Brubaker's Est., 59 Pa. Superior Ct. 109 ..... A6

Buhl's Estate, 300 Pa. 29, 150 A. 86 ..... A6

Burtt's Estate, 353 Pa. 217; 44 A.2d 670;
162 A.L.R. 1053 (1945) A6

Chester School District's Audit, 301 Pa. 203,
151 A. 801 ..... A6

Commonwealth v. National Oil Co., Ltd., 157 Pa. 516,
27 A. 374, 1893 Pa. LEXIS 1445 (1893) A7

Commonwealth v. Wucherer , 351 Pa. 305,
41 A.2d 574 ..... A7

Consumer Party v. Commonwealth of Pennsylvania,
510 Pa. 158, 507 A.2d 323 (1986) A2

Davis v. Pennsylvania Co., etc ., 337 Pa. 456,
12 A. 2d 66 ..... A7

Gibson v. Commonwealth, 490 Pa. 156,
415 A.2d 80 (1980) A3, A4, A8

Gwendolyn Jenkins, Appellee v. Hospital
of The Medical College of Pennsylvania and
Dr. Carol Grabowski and Dr. Dorothy M. Barbo,
Appellants, (535 Pa. 252; 634 A.2d 1099;
1993 Pa. LEXIS 292 (1993) 1, A2

Heisler v. Thomas Colliery Co., 274 Pa. 448,
118 A. 394 ..... A7

Horn & Brannen Mfg. Co. v. Steelman,
215 Pa. 187 ..... A6

Kilpatrick v. Commonwealth, 31 Pa. 198 ..... A7

Lerch's Estate, 309 Pa. 23, 159 A. 868 ..... A6

Lower Nazareth Twp. App., 341 Pa. 171,
19 A. 2d 92 ..... A7

Menges v. Dentler, 33 Pa. 495 (1859) A4, A8

Monongahela St. Ry. v. Phila. Co. et al.,
350 Pa. 603, 39 A.2d 909 ..... A7

Neff's App., 21 Pa. 243 ..... A6

Philadelphia, Baltimore & Washington R.R.
to use v. Quaker City Flour Mills Co.,
Appellant 282 Pa. 362; 127 A. 845;
1925 Pa. LEXIS 629 (1925) A5

Salvation Army Case, 349 Pa. 105,
36 A.2d 479 ..... A6

Shrider v. Nargan, 1 Dall. 68 (1782) 1, A5

Smith v. Fenner, 399 Pa. 633
A.2d 150 (1960) A3

Smith v. Glen Alden Coal Co. et al.,
347 Pa. 290, 32 A.2d 227 ..... A7

Taylor v. Mitchell, 57 Pa. 209 ..... A5

STATUTES

21 P.S. 444, Recording Act of 1775 2

Note: Other mentions of statute are purely incidental within quotations given in the Appendix herein.

THIS PAGE INTENTIONALLY LEFT BLANK

RESPONSE SUPPORTING THE PETITION
of John Ardell Pursley

Respondent George W. Pedlow III, member of the Pursley interests, submits this RESPONSE SUPPORTING THE PETITION of John Ardell Pursley, under Rule 12.6.

Although this case arose as disputed competing claims to rights in property, the United States Supreme Court is here asked to determine the Constitutional limits upon state court power to disregard law upon which one claim rests, while simultaneously creating new rights, as retrospectively applied subsequent rules of law, to perfect the other claim, itself insupportable under prior law. Pursley's Petition cites the doctrine of stare decisis (p. 11), and retrospective application of new rules of property, several places.

The decisional history of the instant case with regard to property rights does not comport with prior Pennsylvania appellate holdings on the issue of retrospective changes in law adversely impacting upon rights vested under prior law, nor with the Pennsylvania Supreme Court's current, and earlier, reliance upon relevant United States Supreme Court holdings. In Automobile Trade Association Of Greater Philadelphia, et al., Appellants, v. City Of Philadelphia, et al., Appellees (528 Pa. 233; 596 A.2d 794; 1991 Pa. LEXIS 169; 1991), the Pennsylvania Supreme Court subscribes to the three factor test used by the United States Supreme Court in Chevron Oil Co. v. Huson (404 U.S. 97; 92 S. Ct. 349; 1971 U.S. LEXIS 95; 30 L. Ed. 2d 296; 1971), for determination if a new principle of law may be applied only prospectively, and nonretrospectively. [Appendix herein, p. A1]

See also Gwendolyn Jenkins, Appellee v. Hospital of The Medical College of Pennsylvania and Dr. Carol Grabowski and Dr. Dorothy M. Barbo, Appellants, (535 Pa. 252; 634 A.2d 1099; 1993 Pa. LEXIS 292; 1993), citing Barasch v. Pennsylvania Public Utility Commission, 516 Pa. 142, 167, 532 A.2d 325, 337, aff'd., 488 U.S. 299, 109 S. Ct. 609, 102 L. Ed. 2d 646 (1989). [Appendix herein, p. A2]

This case is the first instance in 218 years [Shrider v. Nargan, 1 Dall. 68, 1782 to present - see Appendix herein p.

A5] whereby the Pennsylvania Courts have abrogated title derived from an older form of statutory judicial sale, by reason of a purported failure by a purchaser to record the official deeds in the Recorder of Deeds books pursuant to the general recording act of 1775 at 21 P.S. 444, and thereby contravened their own repeated prior precedents on that issue. [see Pursley Petition, various]

It is the first instance whereby the BFP status necessary for a purported subsequent purchaser to gain the protections of that recording act had been supported by a Court's 'judicial notice' of a time limited title search [a nonexistent 'statute of limitation'; see Appendix herein p. A5].

This is a case of first impression wherein entirely new principles of law and rules of property were applied retrospectively to contravene a long history of statutory law and precedent under which the Pursley rights had accrued, vested, were ratified and validated, and had heretofore been protected against retrospective change of law by the doctrine of stare decisis. [see Appendix herein pp. A6 - A8]

In conclusion, there is no prior existing basis, equitable or otherwise, upon which to abrogate the Pursley title derived, and maintained for over 100 years, in accordance with long settled law, while simultaneously perfecting the competing Roberts et al. claim to title, which was under prior law a fatally defective nullity. The approach taken by the Pennsylvania Courts in this case clearly violates Pursley rights protected under the Fifth and Fourteenth Amendments, and the Contract Clause of the United States Constitution, and does not comport with prior relevant United States Supreme holdings on the issue of retrospective changes in law, as they affect prior existing rights.

Respectfully submitted,

George W. Pedlow III, Pro Se, Respondent
224 Outer Dr.
State College, PA 16801

814-466-7454

APPENDIX

Chevron Oil Co. v. Huson (404 U.S. 97; 92 S. Ct. 349; 1971 U.S. LEXIS 95; 30 L. Ed. 2d 296; 1971), in excerpt, states:

". . . . in the last few decades, we have recognized the doctrine of nonretroactivity outside the criminal area many times, in both constitutional and nonconstitutional cases. Cipriano v. City of Houma, 395 U.S. 701; Allen v. State Board of Elections, 393 U.S. 544; Hanover Shoe v. United Shoe Machinery Corp., 392 U.S. 481; Simpson v. Union Oil Co., 377 U.S. 13; England v. State Board of Medical Examiners, 375 U.S. 411; Chicot County Drainage Dist. v. Baxter State Bank, 308 U.S. 371. [***18] . . . .

. . . . In our cases dealing with the nonretroactivity question, we have generally considered three separate factors. First, the decision to be applied nonretroactively must establish a new principle of law, either by overruling clear past precedent on which litigants may have relied, see, e. g., Hanover Shoe v. United Shoe Machinery Corp., supra, at 496, or by deciding an issue [***19] of first impression whose resolution was not clearly foreshadowed , see, e. g., Allen v. State Board of Elections, supra, at 572. Second, it has been stressed that "we must . . . weigh the merits [*107] and demerits in each case by looking to the prior history of the rule in question, its purpose and effect, and whether retrospective operation will further or retard its operation." Linkletter v. Walker, [381 U.S. 618], at 629. Finally, we have weighed the inequity imposed by retroactive application, for "where a decision of this Court could produce substantial inequitable results if applied retroactively, there is ample basis in our cases for avoiding the 'injustice or hardship' by a holding of nonretroactivity. Cipriano v. City of Houma, supra, at 706."

Gwendolyn Jenkins, Appellee v. Hospital of The Medical College of Pennsylvania and Dr. Carol Grabowski and Dr. Dorothy M. Barbo, Appellants (535 Pa. 252; 634 A.2d 1099; 1993 Pa. LEXIS 292; 1993) states:

". . . . . [*262] On appeal to the Superior Court, Ms. Jenkins challenged the constitutionality of the substantive and retroactive application of § 8305(a). The Superior Court addressed only the challenge to the retroactive application of this subsection because its determination that retroactive application of § 8305(a) is unconstitutional rendered consideration of the substance of the provision unnecessary. Our review [***15] is also limited to the constitutionality of the retroactivity [*263] provision. The Superior Court held that the retroactive application of § 8305(a) to causes of action accruing before its effective date was unconstitutional. Because Ms. Jenkins' cause of action accrued on March 8, 1984, more than four years before the promulgation and effective date of § 8305(a), the Superior Court held that it could not constitutionally govern this action.

In Consumer Party v. Commonwealth of Pennsylvania, 510 Pa. 158, 175, 507 A.2d 323, 331-32 (1986) (Citations omitted.), we stated that:

The strong presumption of constitutionality enjoyed by acts of the General Assembly and the heavy burden of persuasion on the party challenging an act have been so often stated as to now be axiomatic. Legislation will not be invalidated unless it clearly, palpably, and plainly violates the Constitution, and any doubts are to be resolved in favor of a finding of constitutionality.

"Neither the federal constitution nor our state constitution invalidates a non-penal statute merely because it is retroactive, unless such legislation impairs contractual or other vested [***16] rights." Barasch v. Pennsylvania Public Utility Commission, 516 Pa. 142, 167, 532 A.2d 325, 337, aff'd., 488 U.S. 299, 109 S. Ct. 609, 102 L. Ed. 2d 646 (1989).

"Retrospective laws may be supported when they do not disturb any vested right, but only vary remedies, cure defects in proceedings otherwise fair, and do not vary existing obligations contrary to their situation when entered into and when prosecuted." Smith v. Fenner, 399 Pa. 633, 161 A.2d 150 (1960).

In Gibson v. Commonwealth, 490 Pa. 156, 415 A.2d 80 (1980), we addressed a constitutional challenge to the retroactivity provision of the legislation creating statutory sovereign immunity, Act of September 28, 1978, P.L. 788, §§ 1 et seq. (Act 152). The issue presented was whether it was constitutional to apply Act 152 to causes which became actionable prior to its enactment. We held that Act 152 could not constitutionally govern claims that accrued before its promulgation.

We set forth the analysis that gave rise to our holding in Gibson [***17] at great length because it is controlling in the instant case:

It is well-settled that the Legislature may not extinguish a right of action which has already accrued to a claimant. This Court has consistently held that the Legislature's repeal of a law which created a right of action does not disturb any actions accrued thereunder:

"There is a vested right in an accrued cause of action .... A law can be repealed by the law giver; but the rights which have been acquired under it, while it was in force, do not thereby cease. It would be an absolute injustice to abolish with the law all the effects it had produced. This is a principle of general jurisprudence; but a right to be within its protection must be a vested right."

The separation of powers doctrine suggests a fortiori that the Legislature may not disturb actions which have accrued under the Judiciary's authority. As this Court has explained:

"In the very nature of things, a law that is enacted after the case has arisen can be no part of the case. Such a law can have only a forced and unnatural relation to the case, and must produce an untrue decision; a decision, not of the case arising between the parties, as [***18] it ought to be, but of a case partly created by the legislature.

[**1105] When therefore, the constitution declares that it is the exclusive function of the courts to try private cases of disputed right, and that they shall administer justice 'by the law of the land,' and 'by due course of law,' it means [*264] to say, that the law relating to the transaction in controversy, at the time when it is complete, shall be an inherent element of the case, and shall guide the decision; and that the case shall not be altered in its substance, by any subsequent law." [Quoting Menges v. Dentler, 33 Pa. 495, 498-99 (1859); see Appendix herein p. A8]

This established view is consistent with federal decisional law which squarely holds that a legislature may not constitutionally eliminate in toto a remedy, whether judicially or legislatively created which has already accrued. [Gibson v. Commonwealth, 490 Pa. at 161-62; 415 A.2d at 83. Citing Ettor v. Tacoma, 228 U.S. 148, 33 S.Ct. 428, 57 L.Ed. 773 (1913); Forbes Pioneer Boat Line v. Board of Comm'rs, 258 U.S. 338, 42 S.Ct. 325, 66 L.Ed. 647 (1922) (Holmes, J.); Lynch v. United States, 292 U.S. 571, 54 S.Ct. 840, 78 L.Ed. 1434 (1934) (Brandeis, J.); W. B. Worthen Co. ex rel. Bd. of Comm'rs v. Kavanaugh, 295 U.S. 56, 55 S.Ct. 555, 79 L.Ed. 1298 (1935) (Cardozo, J.); accord, United States Trust Co. v. New Jersey, 431 U.S. 1, 26-7, 97 S.Ct. 1505, 1520, 52 L.Ed.2d 92 (1977). As Chief Justice Marshall wrote, "[t]he very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury." Marbury v. Madison, 5 U.S. (1 Cranch) 87, 102, 2 L.Ed. 60 (1803)]

The Superior Court applied the principle stated in Gibson, that a tort cause of action generally accrues on the date of

the accident or injury, to the instant case and concluded that Ms. Jenkins' cause of action accrued on March 8, 1984, the date on which the alleged wrongful birth of the child occurred. The Superior [***19] Court properly held that § 8305(a) could not serve to bar her cause of action for wrongful birth because § 8305(a) was not enacted until four years after the cause of action had accrued."

Shrider's Leasee v. Nargan, (1 Dall. 68; 1782) has been cited under various spellings, including Schrider, Shryder or Morgan, but that first given here seems to be the original.

Philadelphia, Baltimore & Washington R.R. to use v. Quaker City Flour Mills Co., Appellant (282 Pa. 362; 127 A. 845; 1925 Pa. LEXIS 629; 1925), states:

"Statutes of limitation are statutes of repose enacted for the common weal to quiet threatened disputes or litigation. As a general rule a statute of limitation applies to actions occurring after its passage, unless such limitation by express language, or necessary implication, is made to cover existing rights of actions. Whether it does so apply becomes a question of legislative intent to be found in the act. It is an established rule in the interpretation of statutes that they should be construed as operating prospectively unless the language clearly expresses a contrary intent, or a necessary implication to that effect: U.S. Fidelity & Guaranty Co. v. Struthers Wells Co., 209 U.S. 306, 314; U.P.R.R. Co. v. Laramie Stock Yards Co., 231 U.S. 190, 199; Cameron v. U.S., 231 U.S. 710, 720; Schwab v. Doyle, 258 U.S. 529, 534. "There is no canon of construction better settled than this, that a statute shall always be interpreted so as to operate prospectively and not retrospectively [***6] unless the language is so clear as to preclude all question as to the intention of the legislature": Taylor v. Mitchell, 57 Pa. 209, 211;

Neff's App., 21 Pa. 243, 247; Horn & Brannen Mfg. Co. v. Steelman, 215 Pa. 187, 191; Brubaker's Est., 59 Pa. Superior Ct. 109, 113. "Words in a statute ought not to have a retrospective operation, unless they are so clear, strong and imperative that no other meaning can be annexed to them, or unless the intention of the legislature cannot be otherwise satisfied": U.S. v. Heth, 3 Cranch 399, 413."

Quoting from Burtt's Estate (353 Pa. 217; 44 A.2d 670; 162 A.L.R. 1053; 1945):

". . . . . Ford's Estate was decided on September 29, 1930. This Court construed the 20th Section of the Wills Act of 1917, supra, and held an unprobatable will, signed by a testator, was "another writing" within the Act. This decision, unless changed by the legislature, has the same effect as if written into the body of the statute. Since the decision in Ford's Estate , there have been eight regular sessions of the Pennsylvania Legislature. If the legislature believed that the decision was contrary to the intent and language of the Wills Act, it could easily have so amended the 20th section of that Act as to make the decision in Ford's Estate no longer controlling in cases arising subsequent to the amendment. In Salvation Army Case, 349 Pa. 105, 36 A. 2d 479, we said at page 110: ". . . this [***23] Court's construction of an act has the same effect as if written into the body of the statute at the time of its enactment: Lerch's Estate, 309 Pa. 23, 28, 159 A. 868; see Buhl's Estate, 300 Pa. 29, 32, 150 A. 86; Barnes Foundation v. Keely et al., 314 Pa. 112, 126, 171 A. 267. If our interpretation were not consonant with the legislative purpose, it was within the power of the legislature to amend the Act in order to effectuate that [**677] purpose. It is most significant, therefore, that two legislature have convened and adjourned since our former decision, and no amendment to the Act, as construed by us, has been enacted by the legislative body. See Chester School District's Audit, 301 Pa. 203, 214, 151 A.

801; Lower Nazareth Twp. App., 341 Pa. 171, 175, 19 A. 2d 92.

[*231] The doctrine of stare decisis still prevails in Pennsylvania. To change a legal principle vitally affecting property rights is a legislative and not a judicial function. This Court has always rigidly adhered to the rule of stare decisis. A statutory construction, once made and followed, should never be altered upon the changed views of new personnel of the court. All of the cases reciting [***24] our policy to adhere strictly to the rule of stare decisis need not be collected and reviewed. What was said by us in a few of the latest cases will suffice: Mr. Chief Justice MAXEY said in Monongahela St. Ry. v. Phila. Co. et al ., 350 Pa. 603, 616, 39 A. 2d 909, "The doctrine of stare decisis is recognized and applied by the courts of this Commonwealth. In Smith v. Glen Alden Coal Co. et al., 347 Pa. 290, 32 A.2d 227, this Court, speaking through the same Chief Justice, said (page 302): 'A rule of property long acquiesced in should not be overthrown except for compelling reasons of public policy or the imperative demands of justice.' The doctrine of stare decisis is not confined to cases involving 'rules of property.' See Kilpatrick v. Commonwealth, 31 Pa. 198, 210, and Commonwealth v. National Oil Co., Ltd., 157 Pa. 516, 'Stare decisis simply declares that, for the sake of certainty, a conclusion reached in one case should be applied to those which follow, if the facts are substantially the same, even though the parties may be different': Heisler v. Thomas Colliery Co., 274 Pa. 448, 452, 118 A. 394." Mr. Justice HORACE STERN said in Commonwealth v. Wucherer , 351 Pa. [***25] 305, at 308, 41 A. 2d 574: "Even were it deemed a doctrine which should no longer prevail, certainly, in the face of so venerable a history, the remedy should be sought, not in the courts, but in the legislature; the function of the former (at least where principles have become firmly imbedded in the warp and woof of judicial interpretation) being to declare what the law is, and that of the legislature to change existing law by statutory fiat"; and in Davis v. Pennsylvania Co., etc ., 337 Pa. 456, at 464, 12 A. 2d 66: "An interpre-

tation [*232] of law consistently followed by an appellate court over so long a period that it has become fundamentally imbedded in the common law of the Commonwealth should not be changed except through legislative enactment, which is a remedy always available and the proper one under our scheme of government. Otherwise the law would become the mere football of the successively changing personnel of the court, and 'the known certain tie of the law', which Lord Coke so wisely said 'is the safety of all', would be utterly destroyed."

Furthermore, the published syllabus in Menges v. Dentler, (33 Pa. 495; 1859) relates:

"The "law of the land," which gives character to a case, and by which it is to be decided, is the law that is inherent in the case, and constitutes a part of it, when it arises as a complete transaction between the parties.

If this law be changed or annulled, the case is changed, and justice denied, and the due course of law violated. A law that is enacted after a case has arisen can be no part of it, nor is any law relating merely to the forms of the remedy.

The bill of rights requires that the law relating to the transaction in controversy, at the time when it is complete, shall be an inherent element of the case, and shall guide the decision; and that the case shall not be altered, in its substance, by any subsequent law".

NOTE: Menges v. Dentler has been cited at least sixty one (61) times in Pennsylvania appellate cases, recently in Gibson v. Commonwealth, 490 Pa. 156; 415 A.2d 80; 1980 Pa. LEXIS 636, (1980), as cited in this Appendix.